



REPUBLIC OF KENYA



KENYA LAW
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**In re FMM & MBM (Subjects) (Adoption Cause E3 of 2023)
[2024] KEHC 1409 (KLR) (12 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1409 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
ADOPTION CAUSE E3 OF 2023
TA ODERA, J
FEBRUARY 12, 2024
IN THE MATTER OF ADOPTION UNDER SECTION
183 OF THE CHILDREN'S ACT, ACT NO. 29 OF 2022
AND
IN THE MATTER OF ADOPTION OF FMM & MBM (SUBJECTS) AND
CNM & SNM.....APPLICANTS**

RULING

1. By a Chamber Summons Application filed by the firm of Bonuke & Co. Advocates and dated 23.1.24, and brought under article 53 (2) of the Constitution of Kenya, section 183 (2 184(1), 185(2) (b) and 188 of Section 160 of the Children Act 2022, the Applicants sought the following orders:

1. Spent
2. That this Honourable court be pleased to appoint MVM appointed the guardian ad litem to FMM & MBM, the children herein pending the hearing and determination of this application and substantive matter,
3. That this Honourable court be pleased to direct the Director of Children Services to investigate and declare if FMM & MBM are free for adoption pending hearing and determination of the Substantive matter.
4. That this Honourable court be pleased to direct the director of children services to investigate and file a report pending the hearing and determination of the substantive That the infant was abandoned at birth.

The grounds on the face of the Application are that

- i. The applicants have filed application for adoption The 1st applicant swore an Affidavit in support of the Application. She deponed that she had the authority of 2nd applicant to swear the affidavit on his behalf as per Authority CNM -1 and that she is married to the 2nd applicant as per marriage certificate (CNM -2). She further stated that the



subjects are her niece and nephew being daughter and son to her late sister in law NKO who passed away on 30.10.2020 as per copy of her death certificate (CNM 3). Also that the said N was married to the proposed guardian ad litem herein as per the birth certificates of the children CNM 4 and 5). She further deponed that the application is based on the requirements of the *Children Act* as advised by her counsel on record and that they fronted MVM the biological father of the children to act as the Minors guardian ad litem and he has consented to the same as per affidavit of fitness and consent (CNM 6 & 7 respectively. Also that the proposed guardian is a brother to the 2nd applicant. She said that V has expressed willingness to act as guardian ad litem to the subjects.

2. The proposed guardian ad litem swore an undated Affidavit filed on 24.1. 2024. He deponed that he fully knows Applicants, and the subjects are his biological children. He supported the 1st applicant that that he was willing to serve as a guardian ad litem to the children.
3. I saw the subject, and the intended guardian ad litem in court on 12.2.24 when they appeared in this court .
4. Determination
5. I have considered the Application the supporting affidavits the annexures and the submissions by counsel for the applicants. I note that the Minors are yet to be declared free for adoption as no report has been filed either by an adoption society or Director children services. The area chief's letter is also missing I have seen applicant's marriage certificate and their identity cards of the applicants, their bank statement and affidavit of by intended guardian ad litem and his consent among other documents.
6. They are all in support of the Minor's adoption by the Applicants. This is a case of kinship adoption.
7. Section 188 of the *Children Act*, Act No 9 of 2022, provides for the appointment of a guardian ad litem for purposes of adoption. Section 188(2) provides thus: -

188. Appointment of guardian Ad litem for purposes of adoption

(2) The guardian ad litem shall be under duty to-
 - (a) safeguard the interests of the child pending the determination of the adoption proceedings;
 - (b) investigate and report to the Court on the facts and circumstances relating to the adoption of the child;
 - (c) make recommendations as to the propriety of making any interim orders or an adoption order in respect of the child;
 - (d) intervene on behalf of the child and arrange for the care of the child in the event of the withdrawal of any consent prescribed by this Act; and
 - (e) undertake such other duties as the Court may from time to time direct, or as may be prescribed by the rules.
8. The First Schedule of the *Children Act*, No 9 of 2022 provides for the best interest considerations.
9. On the basis of the application herein and the documents presented herein and the affidavit of the intended guardian ad litem. I find that the proposed guardian ad litem is a relative to the children being



their father and as per his affidavit of fitness under section of the 188 (1) Children Act 2022. In the best interest of the minors, allow the application dated 23.1.24 and make the following orders;

- a. MVM is appointed as Guardian *Ad litem* for FMM & MBM pending hearing and determination of the substantive motion herein.
- b. I order that the guardian ad litem must prepare a concise and accurate report as per Section 188 of the Children Act and submit it to court within 3 months from today.
- c. The applicants to avail the report by the little Angels network freeing the children for adoption.
- d. A social inquiry report from a social worker on the background 2nd applicant be filed by a social worker from his area of residence in Canada within 3 months from today.
- e. The Director for children services to file a social inquiry report of the subjects within 3 months.
- f. Applicants to file a letter from their area chief introducing them and the subjects to this court
- g. Upon compliance with orders B-F above, the substantive application be heard on 16.5.14
- h. There will be no order as to costs.

DATED, DELIVERED AND SIGNED AT KISII THIS 12TH DAY OF FEBRUARY 2024.

T. A ODERA

JUDGE

In the presence of:

Bonuke for the Applicants

Oigo -Court Assistant

